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7 Attorneys for Complainant

8
9 **BEFORE THE**
STRUCTURAL PEST CONTROL BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

12 JUAN MANUEL GONZALES
c/o Terminix International Co., LP
13 1010 Olinder Court
San Jose, California 95122

14 Registered Applicator's License No. RA 46411,
15 Branches 2 and 3

16 Respondent.

Case No. 2009-35

OAH No.

DEFAULT DECISION
AND ORDER

[Gov. Code, §11520]

17
18 **FINDINGS OF FACT**

19 1. On or about December 29, 2008, Complainant Kelli Okuma, in her official
20 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of
21 Consumer Affairs, filed Accusation No. 2009-35 against Juan Manuel Gonzales (Respondent)
22 before the Structural Pest Control Board.

23 2. On or about October 3, 2006, the Structural Pest Control Board issued
24 Registered Applicator's License Number RA 46411, Branches 2 and 3, to Juan Manuel Gonzales
25 (Respondent). The Registered Applicator's License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on October 3, 2009, unless renewed.

27 3. On or about January 29, 2009, Carol L. Grays, an employee of the
28 Department of Justice, served by Certified and First Class Mail a copy of Accusation No.

1 2009-35, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
2 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
3 which was and is: 1010 Olinder Court, San Jose, California 95122. A copy of the Accusation is
4 attached as Exhibit A, and is incorporated herein by reference.

5 4. Service of the Accusation was effective as a matter of law under the
6 provisions of Government Code section 11505, subdivision (c).

7 5. Government Code section 11506 states, in pertinent part:

8 (c) The respondent shall be entitled to a hearing on the merits if the
9 respondent files a notice of defense, and the notice shall be deemed a specific
10 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

11 6. Respondent failed to file a Notice of Defense within 15 days after service
12 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
13 Accusation No. 2009-35.

14 7. California Government Code section 11520 states, in pertinent part:

15 (a) If the respondent either fails to file a notice of defense or to appear at
16 the hearing, the agency may take action based upon the respondent's express
admissions or upon other evidence and affidavits may be used as evidence without
17 any notice to respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board
19 finds that Respondent is in default. The Board will take action without further hearing and,
20 based on the evidence on file herein, finds that the allegations in Accusation No. 2009-35 are
21 true.

22 9. The total cost for investigation and enforcement in connection with the
23 Accusation are \$1,308.00 as of February 19, 2009.

24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Juan Manuel
26 Gonzales has subjected his Registered Applicator's License No. RA 46411 to discipline.

27 2. A copy of the Accusation is attached.

28 3. The agency has jurisdiction to adjudicate this case by default.

1 4. The Structural Pest Control Board is authorized to revoke Respondent's
2 Registered Applicator's License based upon the following violations alleged in the Accusation:

3 a. Respondent is subject to disciplinary action pursuant to Business and
4 Professions Code sections 490 and 8649 in that on or about May 29, 2008, he was convicted of a
5 substantially related crime by his plea of guilty of violating Section 11379(a) of the Health and
6 Safety Code (transport/sale/etc controlled substance, to wit: methamphetamine), a felony.

7 The factual circumstances of this conviction are that on or about October 25,
8 2007, at a Target store parking lot in San Jose, California, Respondent sold an "eight ball" of
9 crystal methamphetamine for \$150.00 to an undercover San Jose Police Department officer. The
10 amount sold totaled approximately 3.6 grams of methamphetamine. After making that sale,
11 Respondent discussed with the undercover officer, who was assigned to the Narcotics Covert
12 Investigations Unit, obtaining the same quality of crystal methamphetamine the following week
13 for around \$500.00 to \$550.00 for a half ounce. The next drug sale occurred on or about
14 November 8, 2007, when Respondent sold another "eight ball" of crystal methamphetamine to an
15 undercover officer, at the predetermined location (Target store parking lot), for \$150.00.

16 ORDER

17 IT IS SO ORDERED that Registered Applicator's License No. RA 46411,
18 heretofore issued to Respondent Juan Manuel Gonzales, is revoked.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent may
20 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
21 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
22 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
23 statute.

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1 This Decision shall become effective on May 22, 2009.

2 It is so ORDERED April 22, 2009

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4 *Clifford T. Williams*
5 FOR THE STRUCTURAL PEST CONTROL BOARD
6 DEPARTMENT OF CONSUMER AFFAIRS
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11 Attachment:

12 Exhibit A: Accusation No.2009-35
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Exhibit A
Accusation No. 2009-35

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Case No. 2009-35

13 JUAN MANUEL GONZALES
c/o Terminix International Co., LP
14 1010 Olinder Court
San Jose, California 95122

A C C U S A T I O N

15 Registered Applicator's License No. RA 46411,
Branches 2 and 3

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Kelli Okuma (Complainant) brings this Accusation solely in her official
21 capacity as the Registrar/Executive Officer of the Structural Pest Control Board, Department of
22 Consumer Affairs.

23 2. On or about October 3, 2006, the Structural Pest Control Board issued
24 Registered Applicator's License Number RA 46411, Branches 2 and 3, to Juan Manuel Gonzales
25 (Respondent). The Registered Applicator's License was in full force and effect at all times
26 relevant to the charges brought herein and will expire on October 3, 2009, unless renewed.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Conviction)

3 9. Respondent has subjected his Registered Applicator's License to
4 disciplinary action under sections 490 and 8649 of the Code in that he was convicted of a crime
5 substantially related to the qualifications, functions or duties of an applicator, in that on or about
6 May 29, 2008, in the Superior Court of California, County of Santa Clara, Case No. CC800932,
7 entitled *The People of the State of California vs Juan Manuel Gonzales*, Respondent was
8 convicted by his plea of guilty of violating Section 11379(a) of the Health and Safety Code
9 (transport/sale/etc controlled substance, to wit: methamphetamine), a felony. Pursuant to said
10 conviction, the imposition of sentence was suspended, and Respondent was placed on probation
11 for three years, upon terms and conditions that included, but were not limited to, serving eight
12 months in jail and not owning or possessing deadly weapons. The factual circumstances of said
13 conviction are as follows:

14 a. On or about October 25, 2007, at a Target store parking lot in San Jose,
15 California, Respondent sold an "eight ball" of crystal methamphetamine for \$150.00 to an
16 undercover San Jose Police Department officer. The amount sold totaled approximately 3.6
17 grams of methamphetamine. After making that sale, Respondent discussed with the undercover
18 officer, who was assigned to the Narcotics Covert Investigations Unit, obtaining the same quality
19 of crystal methamphetamine the following week for around \$500.00 to \$550.00 for a half ounce.
20 The next drug sale occurred on or about November 8, 2007, when Respondent sold another "eight
21 ball" of crystal methamphetamine to an undercover officer, at the predetermined located (Target
22 store parking lot), for \$150.00.

23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the Structural Pest Control Board issue a decision:


26 1. Revoking or suspending Registered Applicator's License Number RA
27 46411, issued to Juan Manuel Gonzales (Respondent);

28 ///

1 2. Ordering Respondent to pay the Structural Pest Control Board the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3; and

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: 12/29/08

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7 
8 KELLI OKUMA
9 Registrar/Executive Officer
10 Structural Pest Control Board
11 Department of Consumer Affairs
12 State of California
13 Complainant

14 03591110SF2008200293
15 CSR: 12/15/08